



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Misc Appli 2 of 2000

DAVID RUTHUDI NJEGA.....APPLICANT

VERSUS

NJIRU NJEGA.....1ST RESPONDENT

KIGORO NJEGA.....2ND RESPONDENT

HEZEKIAH NDWIGA NJIRU.....3RD RESPONDENT

SIMON NJAGI KIURA.....4TH RESPONDENT

RULING

There is application before court dated 19/11/1999 under Section 76 Cap.160 Succession Act and P&A rules 44.

Orders sought are:-

1. grant be revoked.
2. Title Deeds be cancelled.
3. that succession Case No.177/99 at Embu Principal Magistrate's Court be heard.
4. Costs.

The grounds stated are that the grant was obtained fraudulently by making false statements and concealments of material facts, regarding the beneficiary and dependants of the deceased and that the Respondent did not disclosed that they had filed **Principal Magistrate Case No. 71/98 in Kitui** and failed to disclose that the deceased had other dependants. As a result of non disclosure the applicant filed **SPM Embu Succ.No.177 of 1999.**

The grant sought to be revoked was granted to NJIRU NJEGA ON 18/12/1998 Kitui and was confirmed on 29/3/1999. The Respondent says it was agreed that he take out a grant. And that he filed the same in Kitui because it is near his home and the son of Applicant was residing and working in Kitui and that the application for Grant was advertised in Gazette. A perusal of the record in Kitui Succession Case No. 71/98 shows that in Form P&A 5 the only survivors disclosed are the 2nd Respondent Kigoro Njega and Hezekiel Ndwiga described as the survivors of the deceased. The name of Applicant does not feature

there. P&A 5 is sworn evidence in the application for confirmation the name of the Applicant is not stated. Also no inheritance was allocated to the Applicant.

It is the argument of the Respondent that a family meeting authorized him to file succession case. He did not offer any evidence of such a meeting. Then he said that the Applicant's share (son of deceased) was passed to the Applicant son Hezekiel. Since when did a son inherit the share of father when the father is alive? The Respondent should have known that this was fraudulent especially without express consent of the father. The reasons for filing succession case in Kitui was intended to do these things behind the Applicant's back. The death occurred in Embu. The assets were in Embu and the residence of deceased was in Embu and there is a court in Embu. Although the Respondent said that deceased was the son of Applicant be given land, no evidence to support such an allegation and in any case it does not show that the Applicant was to be denied inheritance.

Upon examining evidence of parties both in affidavit and orally in court, I find that the conduct of the Respondent was fraudulent. He omitted the name of the Applicant in the application. He falsely described Ezekiel as a child of the deceased while he knew well that the was a grand child. He failed to give inheritance to applicant was entitled as a child of intestate deceased.

I am satisfied that the provisions of section 76 of the Succession Act Cap. 160 are proved.

I allow the application and grant orders as prayed.

Costs to the Applicant.

It is so ordered.

Dated this 11th July, 2007.

J. N. KHAMINWA

JUDGE

11/7/2007

Khaminwa – Judge

Njue – Clerk

Parties present except Njiru Njega who is said to be ill.

Ruling read in open court.

J. N. KHAMINWA

JUDGE